

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 00-32361

DAVID A. LUFKIN  
a/k/a DAVID A. LUFKIN, ATTORNEY

Debtor

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In re Lufkin, 255 B.R. 204 (Bankr. E.D. Tenn. 2000)

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**MEMORANDUM ON DEBTOR'S  
MOTION TO ALTER OR AMEND JUDGMENT**

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**RICHARD STAIR, JR.**  
**UNITED STATES BANKRUPTCY JUDGE**

On October 27, 2000, the Debtor filed a Motion to Rehear by Debtor and to Reconsider, Alter or Amend Order Entered October 17, 2000 (“Motion”). By this Motion, the Debtor seeks to alter or amend the court’s October 17, 2000 Order denying his Motion to Limit Scope of Rule 2004 Examinations and Subpoena Ducus [sic] Tecums [sic] and for an Expedited [sic] Hearing filed on September 7, 2000, to include a protective order limiting the Trustee’s release of documents obtained by subpoena from Robert M. Bailey, Receiver (“the Receiver”). The Trustee, on October 31, 2000, filed a Response of Trustee to Debtor’s Motions to Quash and to Reconsider.<sup>1</sup>

## I

The factual background of this contested matter is set forth in the court’s October 17, 2000 Memorandum on Debtor’s Motion to Limit Scope of Rule 2004 Examinations and will be summarized only briefly herein. On January 5, 2000, Robert M. Bailey was appointed Receiver by the Chancery Court for Knox County, Tennessee, and directed to “take into possession the property of the law practice entities” of the Debtor and to oversee their administration and operation. Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure, the Trustee subpoenaed the records of those businesses from the Receiver on August 16, 2000. On September 7, 2000, the Debtor filed a Motion to Limit Scope of Rule 2004 Examinations and Subpoena Ducus [sic] Tecums [sic] and for an Expedited [sic] Hearing on the Motion, objecting to the document release on state and federal constitutional grounds. In its October 17, 2000

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<sup>1</sup> The Trustee’s response encompasses a second motion filed by the Debtor on October 27, 2000, a Motion to Quash Subpoena Duces Tecum and/or for a Protective Order and Request for an Expedited Hearing, which will be disposed of by a separate order.

Memorandum, the court ruled against the Debtor's constitutional objections, in part due to the broad scope of authority granted by Rule 2004.<sup>2</sup>

## II

There is evidence that law enforcement officials and at least one creditor seek access to the same documents subpoenaed by the Trustee. In fact, the Debtor argues that the subpoena is to some degree a subterfuge to grant government officers warrantless access to the Debtor's business records. He accordingly asks the court, pursuant to the equitable powers conferred by 11 U.S.C.A. § 105(a) (West 1993), to issue a protective order limiting the Trustee's release of documents or records to third parties. This section of the Bankruptcy Code allows the court to "tak[e] any action or mak[e] any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process." 11 U.S.C.A. § 105(a). Section 105 "preserves the equity powers of a bankruptcy court." *Palmer v. United States (In re Palmer)*, 219 F.3d 580, 582 n.2 (6<sup>th</sup> Cir. 2000). Actions authorized by § 105 include the issuance of protective orders. *See Askew v. Channel (In re Askew)*, 61 B.R. 87 (Bankr. S.D. Ohio 1986).

## III

The court's October 17, 2000 Memorandum acknowledged the broad scope of Rule 2004 and noted that the Trustee was acting within his statutory authority and upon the court's permission in subpoenaing business records in possession of the Receiver. Therefore, the court

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<sup>2</sup> Notwithstanding that the court ruled against the Debtor, it quashed the subpoena duces tecum served on the Receiver by the Trustee as overly broad. A new subpoena has not been issued.

held that the Trustee's interest in obtaining the documents outweighed any Fourth Amendment concerns of the Debtor. The court did not extend its analysis to include any party other than the Trustee. Whether a different result would prevail if a party other than the Trustee sought to subpoena the disputed records is problematic.

The parties are therefore reminded that the court's October 17, 2000 Order permits the transfer of documents only from the Receiver to the Trustee. The Trustee will not be authorized to allow any third party access to any documents or records obtained from the Receiver without prior approval of the court or in response to a search warrant or subpoena issued by a state or federal court. The Debtor's Motion will be granted and the court's October 17, 2000 Order will be amended accordingly.

FILED: November 2, 2000

BY THE COURT

/s/ Richard Stair, Jr.

RICHARD STAIR, JR.  
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 00-32361

DAVID A. LUFKIN  
a/k/a DAVID A. LUFKIN, ATTORNEY

Debtor

**ORDER**

For the reasons set forth in the Memorandum on Debtor's Motion to Alter or Amend Judgment filed this date, the court directs that the Motion to Rehear by Debtor and to Reconsider, Alter or Amend Order Entered October 17, 2000, filed by the Debtor on October 27, 2000, is GRANTED. An amended order superceding the court's October 17, 2000 Order will be entered.

SO ORDERED.

ENTER: November 2, 2000

BY THE COURT

/s/ Richard Stair, Jr.

RICHARD STAIR, JR.  
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
EASTERN DISTRICT OF TENNESSEE**

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Debtor

**AMENDED ORDER**

For the reasons stated in the Memorandum on Debtor's Motion to Limit Scope of Rule 2004 Examinations filed on October 17, 2000, and in the Memorandum on Debtor's Motion to Alter or Amend Judgment filed this date, the court directs the following:

1. The Motion to Limit Scope of Rule 2004 Examinations and Subpoena Ducus [sic] Tecums [sic] and for an Expedited [sic] Hearing on the Motion filed by the Debtor on September 7, 2000, is DENIED.

2. The subpoena duces tecum served by the Trustee on Robert M. Bailey, Receiver, on August 16, 2000, is QUASHED, without prejudice to the Trustee's right to the issuance of another subpoena duces tecum requiring the production of documents in the manner authorized by the court in its August 8, 2000 Order Authorizing Rule 2004 Examinations.

3. All documents and records transferred to the Chapter 7 Trustee, William T. Hendon, by Robert M. Bailey, Receiver, pursuant to a subpoena issued by this court, shall remain under the exclusive control of the Trustee and shall not be made accessible to any creditor or other entity without prior approval of the court except that the Trustee shall respond to a search warrant or subpoena issued and served upon him by a state or federal court.

SO ORDERED.

ENTER: November 2, 2000

BY THE COURT

/s/ Richard Stair, Jr.

RICHARD STAIR, JR.  
UNITED STATES BANKRUPTCY JUDGE